

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
BLUEFIELD DIVISION**

**THE CITY OF HUNTINGTON,**

**Plaintiff,**

**v.**

**Case No: 3:17-cv-01362  
Judge Robert C. Chambers**

**AMERISOURCEBERGEN DRUG  
CORPORATION, CARDINAL HEALTH INC, and  
MCKESSON CORPORATION,  
GREGORY DONALD CHANEY, M.D.,**

**Defendants.**

**MOTION TO REMAND**

Plaintiff, the city of Huntington County, moves to remand this matter to state court because federal subject matter jurisdiction is lacking. Defendants' removal on the basis of fraudulent misjoinder, a particularly obscure species of fraudulent joinder jurisprudence, is improper. The theory has yet to be adopted by the Fourth Circuit Court of Appeals (or by any other Circuit Court of Appeals for that matter, outside of the Eleventh Circuit, where it was invented). The theory suffers from numerous issues of application, resulting in a multitude of burgeoning split in authority regarding its adoption and application. Its use necessarily implicates significant issues of federalism and judicial restraint. For these reasons, this Court should reject the doctrine *in toto*. Nonetheless, should the Court choose to acknowledge the theory, it requires allegation and proof of "egregious" misjoinder. Defendants have neither alleged egregious misjoinder nor is it present. Moreover, even if the Court were to accept the fraudulent misjoinder theory while simultaneously rejecting the egregiousness requirement, this matter should still be remanded as the claims against non-diverse defendant Dr. Chaney

are properly joined, under either West Virginia or federal law.

Respectfully submitted,  
**THE CITY OF HUNTINGTON,**  
By Counsel,

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**CERTIFICATE OF SERVICE**

I, Charles R. Webb, counsel for Plaintiff, the City of Huntington, do hereby certify service that on March 15, 2017, I served the forgoing *Motion to Remand* upon the parties hereto by filing a true copy thereof *via* ECF to the following counsel of record:

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